



## REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

### 438-440 Avenue Road and 169-171B Balmoral Avenue - Ontario Land Tribunal Hearing - Request for Direction Report

**Date:** March 16, 2023  
**To:** City Council  
**From:** City Solicitor  
**Wards:** Ward 12 - St. Paul's

#### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

#### **SUMMARY**

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On July 9, 2021 the City received an Official Plan and Zoning By-law Amendment application for 438-440 Avenue Road and 169-171B Balmoral Avenue to permit a 24-storey residential apartment building containing 223 dwelling units. A Rental Housing Demolition application was submitted to permit the demolition of 10 rental dwelling units on the site.

The applicant appealed City Council's neglect or failure to make a decision on its application for the Official Plan Amendment and Zoning By-law Amendment (the "Appeal"), to the Ontario Land Tribunal (the "OLT") on March 3, 2022 (OLT-22-002490).

The City Solicitor requires further directions for an upcoming OLT hearing scheduled to commence on May 15, 2023.

#### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council adopt the confidential recommendations contained in the Confidential Attachment 1 to this report from the City Solicitor.

2. If the confidential recommendations in Confidential Attachment 1 are adopted, City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 as well as Confidential Appendices "A" and "B", with the remainder of the Confidential Attachment 1 to remain confidential, as it contains advice subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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There is no financial impact arising from the adoption of the Confidential Recommendations beyond what has already been approved in the current year's budget.

## **DECISION HISTORY**

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On July 9, 2021 the City received an Official Plan and Zoning By-law Amendment application to permit a 24-storey residential apartment building containing 223 dwelling units. A Rental Housing Demolition application was submitted to permit the demolition of 10 rental dwelling units on the site.

A Preliminary Report was adopted by Toronto and East York Community Council on October 14, 2021, authorizing staff to conduct a community consultation meeting with an expanded notification area. The decision of the Toronto and East York Community Council can be found here:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE28.24>

On March 3, 2022 the applicant appealed City Council's neglect or failure to make a decision on the Official Plan Amendment and Zoning By-law Amendment to the OLT. The OLT held the first Case Management Conference on June 28, 2022. BANA (the Balmoral and Avenue Neighbourhood Alliance) as well as two other residents who live in proximity to the Site were accorded party status in the proceeding. The Toronto District School Board (TDSB) was a party to the proceedings as well, but recently advised the OLT that all their concerns in relation to the proposal had been resolved and that they would only be monitoring the hearing.

A Request for Direction Report on the appeal was adopted by City Council on June 15 and 16, 2022 directing the City Solicitor and appropriate City Staff to attend the OLT to oppose the Official Plan Amendment and Zoning By-law Amendment application for 438-440 Avenue Road and 169-171B Balmoral Avenue and to continue discussions with the applicant in an attempt to resolve outstanding issues. The Request for Direction Report can be found at:

<https://secure.toronto.ca/council/agenda-item.do?item=2022.TE33.9>

On January 23, 2023, the Applicant submitted a revised proposal to the OLT. This revised proposal will form the basis for the hearing scheduled to commence May 15, 2023. The revised proposal represents an improvement over the original submission as set out in the chart below:

<b>Category</b>	<b>Original Proposal July 9, 2021</b>	<b>Revised Plans January 23, 2023</b>
Building Height (metres) (excluding mechanical penthouse)	79 (24 storeys)	73 (21 storeys)
Building Height of the Western Portion (metres)	22.3 (6 storeys)	37 (10 storeys)
Residential Gross Floor Area (square metres)	18,000	16,626
Floor Space Index (times the area of the lot)	9.24	8.54
Setback on Avenue Road to curb (metres)	1.5	4.8
Tower Setback to the South (metres)	3.6	5.5
Tower Setback to the West (metres)	19.95	19.8

The purpose of this report is to request further instructions in respect of this matter prior to OLT hearing scheduled to commence on May 15, 2023. This Report has been prepared in consultation with staff from Community Planning and Urban Design.

## **COMMENTS**

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The City Solicitor requires further instructions. This report is about litigation before the OLT and contains advice or communications that are subject to solicitor-client privilege.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Confidential Attachment 1 - Confidential Information
2. Confidential Appendix "A" - Confidential Information
3. Confidential Appendix "B" - Confidential Information